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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,281

11/12/2003

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02/11/2009

EXAMINER

STERLING, AMY JO

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

02/11/2009

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN STEWART IBARA, CRYSTAL GWEN STEINKE,
JOEL HARIAN JONES, VICKY GREENBAUM,
DAVID A. WOODLEY M. PACKARD, and ELISA MARIE JONES

Appeal 2008-2086
Application 10/712,281
Technology Center 3600

Decided:¹ February 11, 2009

Before LINDA E. HORNER, JOHN C. KERINS, and
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Steven Stewart Ibara et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-5, 7-11, 13, 14, 16, and 18-24, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is to a page holder enabling unencumbered manual page turning (Spec. 1, Title). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A page holder comprising:
 - (a) a tensioning mechanism set at a predetermined strength, being sufficiently strong to retain pages in an open position, yet sufficiently light to enable page turning,
 - (b) a plurality of gripping members, and
 - (c) a retaining line of predetermined length,
 - (d) said tensioning mechanism being attached to one of said gripping members, and
 - (e) said line being attached to said tensioning mechanism so that said tensioning mechanism feeds in additional line to enable page turning and subsequently retracts said additional line as the page turn is completed,

(f) the other end of said line being attached to the second gripping member, and

(g) the tensioning mechanism including a tension adjustment control that allows a user to vary tension the tensioning mechanism applies to the retaining line,

whereby said pages are retained in an open position, and

whereby a user can turn said page without delay or encumbrance, and

whereby the remaining pages are secure throughout the page turn.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Capper	US 3,813,075	May 28, 1974
Johnson	US 4,826,099	May 2, 1989
Pannu	US 5,377,946	Jan. 3, 1995
Pagano	US 5,855,329	Jan. 5, 1999
Sherratt	US 6,375,165 B1	Apr. 23, 2002
Hashimoto	US 2004/0076825 A1	Apr. 22, 2004

The Appellants seek review of the following Examiner's rejections:

1. Claims 1, 3, 4, 7, 10, 11, 13, 14, 16, and 21-24 under 35 U.S.C. § 103(a) as unpatentable over Pannu and Sherratt.
2. Claim 2 under 35 U.S.C. § 103(a) as unpatentable over Pannu, Sherratt, and Pagano.
3. Claim 5 under 35 U.S.C. § 103(a) as unpatentable over Pannu, Sherratt, and Johnson.

4. Claims 8, 9, 18, and 19 under 35 U.S.C. § 103(a) as unpatentable over Pannu, Sherratt, and Hashimoto.
5. Claim 20 under 35 U.S.C. § 103(a) as unpatentable over Pannu, Sherratt, and Capper.

ISSUES

The Examiner found that Pannu teaches all of the elements of the independent claims except for a tension adjustment control on the reel, and that Sherratt teaches a winding mechanism with a tension adjustment control. Ans. 4. The Examiner determined that it would have been obvious to modify the reel of Pannu to add a tension adjustment control, as taught in Sherratt, “in order to control the tension of the line in Pannu and the method thereof.” Ans. 5.

The Appellants contend that Pannu’s book holder makes no provision for the tension of a predetermined strength in the range claimed, or any mention of page turning because Pannu’s holder is for retention only. App. Br. 17. The Appellants further contend that there would have been no reason for one having ordinary skill in the art to modify Pannu’s reel with Sherratt’s tension adjustment control, because Pannu’s book holder and Sherratt’s movable barrier for infants are each complete and functional in themselves. App. Br. 18.

The issue presented by this appeal is:

Have the Appellants shown the Examiner erred in determining that the combined teachings of the prior art would have led to the claimed page

holder having a tensioning mechanism set at a predetermined strength, being sufficiently strong to retain pages in an open position, yet sufficiently light to enable page turning and having a tension adjustment control to allow a user to vary tension applied to the retaining line?

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Pannu discloses a bed tray 10 having a page holder 90 in the form of a thin transparent strip 92 of flexible plastic material which is stored in a spring-biased reel 94 that is bonded to the tray handle 21. Pannu, col. 4, ll. 60-65; Fig. 7.
2. Pannu discloses that the strip 92 can be withdrawn from the reel against the action of the reel spring and extended to lie across the open pages of a book supported on an inclined panel insert 24 of the tray 10. Pannu, col. 4, ll. 65-68; Fig. 7.
3. Pannu discloses that the free end of the strip 92 is provided with a grommet or eyelet 97 adapted for positioning about a fastening pin 98, or the like, which is mounted on the other side of the bed tray 10. Pannu, col. 5, ll. 1-4; Fig. 7.

4. Pannu discloses that owing to the spring bias of the reel 94, the strip 92 will be held against the open pages of a book placed on the panel 24. Pannu, col. 5, ll. 7-9.
5. Pannu does not disclose any specific amount of tension applied to the strip 92 by the reel. Pannu, *passim*.
6. Pannu also does not disclose applying a sufficient amount of tension to the strip 92 to retain pages in an open position and yet enable page turning. Pannu, *passim*.
7. Pannu is focused solely on retention of the open pages of the book and does not address how the user is to turn the pages of the book. Pannu, col. 5, ll. 7-9.
8. Sherratt discloses a barrier to close off access across a doorway, hallway, or other throughway in a house from a child or dog. Sherratt, col. 1, ll. 4-10.
9. Sherratt discloses the barrier device 10 has a flexible barrier sheet 14 that extends from and retracts onto a roll 16, and a tensioning handle 38 that can be rotated in a tightening position to add more tension in the barrier sheet 14 to solidify the barrier. Sherratt, col. 2, ll. 26-37 and 55-60; *id.*, col. 5, ll. 15-26.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, ___, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at ___, 127 S. Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

Independent claim 1 recites a page holder comprising “a tensioning mechanism set at a predetermined strength, being sufficiently strong to retain pages in an open position, yet sufficiently light to enable page turning.” Independent method claims 11, 21, and 23 similarly recite the step of providing a page holder(s) comprising a tensioning mechanism as recited in claim 1. Independent claims 1 and 21 further recite that the tensioning mechanism includes “a tension adjustment control” that allows “a user to vary tension the tensioning mechanism applies to the retaining line.” The combined teachings of Pannu and Sherratt would not have led one having ordinary skill in the art to the claimed page holder or method, as recited in claims 1, 11, 21, and 23.

The Examiner appears to be relying solely on Pannu for the disclosure of a tensioning mechanism set at a predetermined strength that is sufficiently strong to retain pages in an open position, yet sufficiently light to enable page turning. Ans. 3-4. The Examiner's position is that a spring with a certain "K" constant will set a predetermined strength for the reel. *Id.*

While Pannu discloses that owing to the spring bias of the reel 94, the strip 92 will be held against the open pages of a book placed on the panel 24 (Fact 4), Pannu does not disclose any specific amount of tension to be applied to the strip 92 by the reel and does not disclose applying a sufficient amount of tension to the strip 92 to retain pages in an open position and yet enable page turning (Facts 5 & 6). Further, nothing in the disclosure of Pannu necessarily requires that the reel has a tension set to retain pages, yet allow page turning. Rather, Pannu is focused solely on retention of the open pages of the book and does not address how the user is to turn the pages of the book (Fact 7).

Further, we do not see any reason to modify the page holder of Pannu to include the tension adjustment control of Sherratt. Pannu is directed to retaining pages of a book in an open position and does not address the specific tension necessary, nor does it address page turning (Facts 5 & 7). Sherratt is directed to a barrier device used to block a doorway, hallway, or other throughway from entry by children or pets (Fact 8). Thus, the tension adjustment control of Sherratt is provided to increase the tension as much as possible on the barrier sheet to "solidify" the barrier (Fact 9). We fail to see how the teaching of using a tension adjustment control to solidify a barrier

wall would have led one having ordinary skill in the art to modify the reel of Pannu to adjust and possibly lessen the tension on its retention strip so that pages can be retained in an open position, yet also turned, as claimed.

The Examiner found that “[i]t was well within the knowledge generally available that the tension line (92) would need to be adjustable in order to accommodate thicker books such as a dictionary and thinner pages such as sheet music.” Ans. 8. However, the tension itself need not be adjustable, as the ability to accommodate books of different thicknesses is provided by having a shorter or longer section of the transparent strip unreeled from the spring-biased reel.

Thus, we cannot sustain the Examiner’s rejection of claims 1, 11, 21, and 23 under 35 U.S.C. § 103(a) as being unpatentable over Pannu and Sherratt. For these same reasons, we also cannot sustain the Examiner’s rejection of dependent claims 3, 4, 7, 10, 13, 14, 16, 22, and 24, which is based on the combined teachings of Pannu and Sherratt.

The Examiner’s rejections of claims 2, 5, 8, 9, and 18-20 are all based on the underlying combination of Pannu and Sherratt. The Examiner has not relied upon Pagano, Johnson, Hashimoto, or Capper to cure the deficiencies noted *supra* in the combined teachings of Pannu and Sherratt. Of these references, only Pagano and Capper are directed to book or page holders, and both of these references, like Pannu, focus solely on retention of the book pages in an open position. As such, for the same reasons provided *supra*, we cannot sustain the Examiner’s rejections of claims 2, 5, 8, 9, and 18-20.

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CONCLUSION

The Appellants have shown the Examiner erred in determining that the combined teachings of the prior art would have led to the claimed page holder and method having a tensioning mechanism set at a predetermined strength, being sufficiently strong to retain pages in an open position, yet sufficiently light to enable page turning and having a tension adjustment control to allow a user to vary tension applied to the retaining line.

DECISION

The decision of the Examiner to reject claims 1-5, 7-11, 13, 14, 16, and 18-24 is REVERSED.

REVERSED

Vsh

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